

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES WILLIAM AUSSICKER,

Petitioner,

v.

CASE NO. 2:08-CV-12280

CINDI CURTIN,

Respondent.

ORDER GRANTING PETITIONER'S MOTION TO AMEND

This matter is before the court on Petitioner's motion for leave to amend his habeas petition to add a claim of ineffective assistance of appellate counsel as good cause for the failure to raise an issue on direct appeal. Petitioner's motion and supporting brief are dated November 28, 2008, although those documents were not filed by the court until December 8, 2008. Respondent filed an answer to the habeas petition on December 3, 2008.

Under the Federal Rules of Civil Procedure, a party may amend his or her pleadings once as a matter of course at any time before a responsive pleading is served. See Fed. R. Civ. P. 15(a).¹ Since Petitioner apparently submitted his documents to prison officials before a responsive pleading was filed in this case, see *Houston v. Lack*, 487 U.S. 266, 270-76 (1988) (prisoners documents are deemed filed

¹Rule 15(a) applies to habeas corpus actions as it applies to other civil cases. See 28 U.S.C. § 2242 (habeas petitions "may be amended or supplemented as provided in the rules of procedure applicable to civil actions").

in federal court when submitted to prison officials for mailing under the “prison mailbox rule”), he has the right to amend the petition without seeking permission from the court.

Accordingly, IT IS ORDERED that Petitioner’s motion for leave to amend [Dkt. # 11] is GRANTED. The information submitted with Petitioner’s motion has been filed and shall be considered as part of the petition. If desired, Respondent may file an answer to the supplemental information within 30 days of the filing date of this order. Petitioner shall then have 30 days to file any reply to Respondent’s answer(s).

IT IS SO ORDERED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 29, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 29, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522